

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RHONDA DENISE THEUS,

Plaintiff,

v.

Case Number 15-14285

Honorable David M. Lawson

Magistrate Judge Stephanie Dawkins Davis

INTERNAL REVENUE SERVICE
CRIMINAL INVESTIGATION DIVISION,

Defendant, Third-Party Plaintiff,

v.

GREEN PLANET SERVICING, LLC,

Third-Party Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION IN PART,
DENYING DEFENDANT'S MOTION TO DISMISS AS MOOT,
AND DISMISSING COMPLAINT WITHOUT PREJUDICE**

Presently before the Court is the report issued on August 2, 2016 by Magistrate Judge Stephanie Dawkins Davis pursuant to 28 U.S.C. § 636(b), recommending that the complaint against the defendant be dismissed with prejudice under Federal Rule of Civil Procedure 41(b), and the pending motion to dismiss be denied as moot. The magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

The Court agrees with the findings and conclusions of the magistrate judge in all but one respect. This is essentially a wrongful foreclosure case that was filed in an attempt to prevent the plaintiff from being evicted. Indeed, the plaintiff filed a temporary restraining order asking for injunctive relief to halt her eviction from the property at issue in this case, which the Court denied. It is reasonable to assume that the eviction took place and that the reason the plaintiff has not responded to the multiple warnings from the magistrate judge that her case may be dismissed for failure to prosecute is because she is not receiving the notices. Therefore, the Court will exercise its inherent power, and authority under Federal Rule of Civil Procedure 41(b), to *sua sponte* dismiss the plaintiff's complaint without prejudice. *See Link v. Wabash R. Co.*, 370 U.S. 626, 630-31 (1962). The magistrate judge's report is adopted in all other respects.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt. #11] is **ADOPTED IN PART**.

It is further **ORDERED** that the defendant's motion to dismiss [dkt. #4] is **DENIED** as moot.

It is further **ORDERED** that the complaint is **DISMISSED WITHOUT PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: August 23, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 23, 2016.

s/Susan Pinkowski
SUSAN PINKOWSKI